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June 18, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**Re: Comments of KMC Telecom Inc. on ALTS Petition For Declaratory Ruling
Regarding Section 706; CC Docket No. 98-78**

Dear Ms. Salas:

On behalf of KMC Telecom Inc., enclosed are an original and thirteen copies of its above-referenced Comments for filing. Please date stamp the enclosed extra copy.

If you have any questions, please contact me.

Very truly yours,


Eric N. Einhorn
Counsel for KMC Telecom Inc.

Enclosures

cc: Tricia Breckenridge
Michael Duke
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of the Association for Local)
Telecommunications Services (ALTS) for a)
Declaratory Ruling Establishing Conditions)
Necessary to Promote Deployment of)
Advanced Telecommunications Capability)
Under Section 706 of the Telecommunications)
Act of 1996)

CC Docket No. 98-78

COMMENTS OF
KMC TELECOM INC.

KMC Telecom Inc. ("KMC"), pursuant to the Federal Communications Commission's ("Commission") Public Notice, DA 98-1019 (rel. May 28, 1998) issued in the above-captioned proceeding, respectfully submits the following comments in support of the Petition of the Association for Local Telecommunications Services ("Petition") for a declaratory ruling.

KMC Telecom Inc. is authorized to provide, through its subsidiaries, competitive local and long distance services in 17 states, and Puerto Rico, and is operational in six states (Alabama, Florida, Georgia, Louisiana, Texas, and Wisconsin). KMC has installed state-of-the-art networks in Huntsville, Alabama; Melbourne, Florida; Savannah and

Augusta, Georgia; Baton Rouge and Shreveport, Louisiana; Corpus Christi, Texas; and Madison, Wisconsin, and will soon build similar networks in several other cities in the Southeast and Midwest.

INTRODUCTION

KMC supports ALTS' request for a declaratory ruling under Section 706 of the Telecommunications Act of 1996 ("Act"). As explained below, the Commission should utilize the authority granted to it in Section 706 of the Act to implement further the Act's central purpose of opening local telecommunications markets to competition. Doing so will have the effect that lawmakers, incumbents, and competitors contemplated in designing the Act to foster significant growth in the deployment of advanced telecommunications services and facilities nationally. The Commission can accomplish this by declaring that the interconnection, collocation, unbundling, and resale requirements of Sections 251, 252, and 271 apply fully to data services and facilities. The Commission should also preserve the measures taken by the state commissions based upon the expertise they have developed while presiding over local competition proceedings under the Act and under state statutes that encourage the deployment of those facilities and services. Accordingly, KMC requests that the Commission grant the relief requested in the Petition.

I. THE COMMISSION SHOULD USE SECTION 706 TO EFFECTUATE THE ACT'S CENTRAL PURPOSE OF OPENING TELECOMMUNICATIONS MARKETS TO COMPETITION, AND NOT TO ADVANCE BOC MONOPOLY ADVANTAGES

To date, the BOCs have at every step vigorously resisted opening their monopoly local telecommunications markets to competition. The Petition presents an opportunity for the Commission to answer this BOC intransigence by taking steps to effectuate the core policies of the Act.¹ As the Act recognizes, competition is the best and most efficient way to advance the development of the nation's telecommunications networks. In contrast to the Section 706 petitions of the BOCs that seek to promote and leverage BOC monopoly advantages by eviscerating the core principles of the Act, the ALTS petition would allow the Commission to reiterate that the Act's requirements apply fully to data and broadband services and facilities.

Competitors have recognized the ability to use existing infrastructure (such as copper loops) for, and have devoted significant resources towards, providing high speed services to local end-users when possible. Competitive opportunities to provide ubiquitous advanced data services, however, remain largely dependent on BOC actions

¹ As KMC previously stated in its Opposition Comments to the BOC 706 Petitions, "... given Section 706's emphasis on promoting competition, Section 706 presents an opportunity for the FCC to further the pro-competitive goals of the Act by imposing greater, not lesser, regulation on the BOCs." *Opposition Comments of Focal Communications Corporation, Hyperion Telecommunications, Inc., KMC Telecom Inc., and McLeodUSA Incorporated*, CC Docket No. 98-11, dated April 6, 1998, at iii.

because of competitors' need for access to the existing infrastructure as envisioned in the Act. Unfortunately, BOCs have persistently abused their monopoly control of these bottleneck local facilities. New, innovative competitors -- like KMC -- and established ones alike would be in a position to provide access to high-speed ubiquitous services for local customers today but for the stumbling blocks that BOCs have erected to prevent competitor access to these facilities. Thus, the key to even more rapid deployment of advanced services is requiring BOC compliance with the Act. Indeed, as long as BOCs do not live up to their obligations, they continue to stifle competition and limit consumer access to high-speed bandwidth.

The appropriateness of the Petition is even more striking when considering the parties that almost certainly will not support it. As there are currently no legal or regulatory restrictions prohibiting BOCs from providing high-speed data and transport services outside of their regions, BOCs that are truly interested in advancing data services on a national level could have rallied around the market-opening provisions of the Act to provide advanced services outside their regions. They did not. Instead, they have expanded their monopoly regions through mergers and have worked to avoid their market opening obligations under the Act through their 706 Petitions and other actions. The BOCs' strategy with respect to Section 706 is clearly to further use their monopoly positions to quell rather than encourage competition. This strategy underscores the

BOCs' recognition of their power to discriminate against competitors through continued control of local loops.

II. THE FCC MUST FORCE BOCs TO SUBMIT TO THE ACT AND DISCONTINUE RELIANCE ON MONOPOLY CONTROL

As the Petition illustrates, the BOCs continue to misuse their monopoly control over the bottleneck local facilities essential to CLEC implementation of advanced telecommunications services. Until the Commission steps in, BOC bullying will persist and CLECs' efforts to deploy high speed services will be impaired. The Petition makes concrete proposals which, when followed, will promote expanded deployment of advanced telecommunications services by encouraging competition.

The Commission should reiterate that, despite BOC contentions to the contrary, the Act requires BOCs to provide unbundled xDSL facilities and resale of those services.²

² State Commissions have already recognized that the provision of unbundled xDSL facilities is required by the Act. For example, recently, the Texas Public Utility Commission issued a "Recommendation" to provide Southwestern Bell Telephone Company ("SWBT") with a roadmap regarding action that SWBT must take before it can satisfy the requirements of Section 271 of the Act. The Recommendation states that SWBT must publish a manual showing CLECs how to use unbundled loops to provide ASDL and HDSL services, and allow 4-wire HDSL service on unbundled loops. *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Commission Recommendation, Project No. 16251 (Tx. PUC June 3, 1998) (available on-line at <http://www.puc.state.tx.us/whatsnew/16251de4.htm>).

As outlined in the Petition, BOCs have stonewalled attempts of competitors to obtain unbundled xDSL facilities resulting in state commission action. BOC refusals to unbundle data service related network elements such as those associated with xDSL and to provide for the resale of those services hinders CLECs' ability to enter the market for advanced data services.

The Commission should also take quick and decisive action by compelling BOCs to comply once and for all with their collocation obligations. The inability of CLECs to collocate necessary advanced data equipment because of BOC foot-dragging³ seriously hinders CLEC efforts to deploy advanced telecommunications services. A clear and uniform collocation policy, such as the one proposed in the Petition, is necessary to discontinue BOC intransigence in allocating, pricing, and delivering space. As such, the Commission should adopt such a policy immediately.

Finally, the Commission should order BOCs to interconnect with CLEC data networks and facilities at cost-based rates. Despite the explicit directive of the Act to interconnect networks, some BOCs have taken the position that interconnection for data services pursuant to Sections 251 and 252 equivalent to the interconnection provided for

³ For example, in December of 1997 the Washington Utilities and Transportation Commission found that US West was unreasonable and discriminatory in its refusal to provide several competitors with space to collocate. *Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Interconnection Rates, Term and Conditions with US West Communications, Inc.*, Initial Order, Docket No. UT-960323 (WUTC Dec. 23, 1997).

voice services is not required by the Act. Equivalent interconnection is essential for the deployment of advanced telecommunications envisioned by the Act. BOC insistence that cost-based interconnection of data networks and facilities is not required may be described most generously as a dangerous misreading of the Act and frustrates its pro-competitive policies. The Commission should, therefore, make an unambiguous declaration that such interconnection is required by the Act, that existing interconnection agreements apply to data networks and facilities, and that parties must negotiate for data services on parallel terms with traditional telecommunications services.

III. THE EXPERTISE THAT THE STATES HAVE DEVELOPED IN PRESIDING OVER LOCAL COMPETITION PROCEEDINGS SHOULD BE PRESERVED FOR ADVANCED TELECOMMUNICATIONS SERVICES

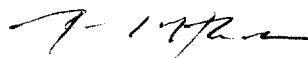
Under the Act, state public utility commissions have key responsibilities related to opening local telecommunications markets. The Eighth Circuit's interpretation of the Act underscored this fact. This role -- in proceedings related to costing, 271 applications, and interconnection approvals and arbitrations, among other things -- must be preserved with respect to advanced telecommunications. A declaration that the interconnection, collocation, unbundling, and resale requirements of Sections 251, 252, and 271 of the Act apply fully to data and broadband services and facilities would support and

encourage crucial state participation in promoting development and deployment of advanced telecommunications.

CONCLUSION

BOC monopoly control over bottleneck local exchange facilities and BOC intransigence in opening such facilities to CLECs is detrimental to the policy of development and deployment of advanced telecommunications capability envisioned in the Act. The Commission should use Section 706 to promote competition and further the elimination of BOC monopoly advantages to effectuate this policy. The Commission should grant the relief requested in the Petition.

Respectfully submitted,



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Dated: June 18, 1998

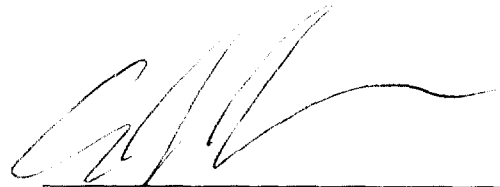
Counsel for KMC Telecom Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1998, a true copy of the foregoing document was served by hand on the parties listed below.

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A handwritten signature in black ink, appearing to read 'Eric N. Einhorn', written over a horizontal line.

Eric N. Einhorn